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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT JAMES SPELLS,

Defendant and Appellant.

B289467

(Los Angeles County  
Super. Ct. No. BA434100)

APPEAL from a judgment of the Superior Court of  
Los Angeles County. Craig Richman, Judge. Affirmed.

Verna Wefald, under appointment by the Court of Appeal,  
for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief  
Assistant Attorney General, Lance E. Winters, Assistant  
Attorney General, Scott A. Taryle and David E. Madeo, Deputy  
Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Robert James Spells (defendant) appeals from the judgment entered after he was convicted of rape and other sex offenses. He contends that the joint trial of those charges with charges of murder and robbery (which resulted in a deadlocked jury and mistrial) deprived him of his rights to due process and a fair trial. Finding no merit to defendant's contention, we affirm the judgment.

### **BACKGROUND**

Defendant was charged as follows: murder, in violation of Penal Code section 187, subdivision (a)<sup>1</sup> (count 1); second degree robbery in violation of section 211 (count 2); human trafficking of a minor for a commercial sex act, by force, fear, fraud, or threat of injury, in violation of section 236.1, subdivision (c)(2) (count 3); aggravated sexual assault of a child in violation of section 269, subdivision (a)(1), rape, in violation of section 261, subdivision (a)(2) (counts 4 & 5); forcible lewd act upon a child in violation of section 288, subdivision (b)(1) (count 6); lewd act upon a child in violation of section 288, subdivision (a) (count 7); forcible rape in violation of section 261, subdivision (a)(2) (counts 8 & 9). It was also alleged that defendant personally used a firearm in the commission of counts 1 and 2 (§ 12022.53, subds. (b), (c), (d)), that defendant kidnapped a victim under 14 years of age in the commission of counts 4, 5, 6, 8, and 9 (§ 667.61, subds. (a), (d)(2), (j)(1)), that defendant had four prior strike convictions (§§ 667, subds. (a)(1), (b)-(i), 1170.12, subds. (a)-(d)), and that he had served four prior prison terms (§ 667.5, subd. (b)).

The trial court granted defendant's section 1118.1 motion for acquittal as to counts 5 and 9. The jury found defendant

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<sup>1</sup> All further statutory references are to the Penal Code, unless otherwise indicated.

guilty of counts 3, 4, 6, 7, and 8, and found the special allegations true as to those counts. Since the jurors were deadlocked on counts 1 and 2, the court declared a mistrial as to those counts. Defendant admitted one prior serious felony conviction and to having served four prior prison terms.

On March 23, 2018, the trial court sentenced defendant to prison as follows: on count 7, the base term, the middle term of six years, doubled as a second strike to 12 years, plus five years pursuant to section 667, subdivision (a)(1), and three years for the three prior prison terms, pursuant to section 667.5, subdivision (b), with the fourth prison term enhancement stayed; count 3, a consecutive term of 15 years to life in prison, doubled to 30 years to life; count 4, a consecutive term of life without the possibility of parole; count 6, a 16-year term imposed and stayed pursuant to section 654; and count 8, a term of life without the possibility of parole imposed and stayed pursuant to section 654.

Defendant filed a timely notice of appeal from the judgment.

## **Evidence at trial**

### ***Pimp-prostitute culture***

Los Angeles Police Department (LAPD) Detective Vanessa Rios testified as an expert in human trafficking, typical pimp/prostitute relationships, culture and language. She testified that a pimp usually has a stable of prostitutes who often refer to one another as “wifies,” while the pimp refers to himself as “daddy” in order to establish himself as a father figure in a kind of family, which helps him control the prostitutes who work for him. Child prostitutes are considered valuable, as they usually bring in more money. Prostitutes may view the pimp as a both a father figure and a boyfriend, especially when they are

young, but usually the boyfriend illusion dissipates with age and experience. Most prostitutes who have reached their early 20's, see their pimp is just a pimp.

The pimp provides his prostitute with a phone, and usually takes away her personal phone. Keeping in contact with frequent text messages helps the pimp maintain control and gives prostitutes a feeling of security. Prostitutes are often raped. They are also subjected to physical punishment by the pimp. Though prostitutes would not usually steal from a pimp, they might hold back a portion of what was earned. Being caught holding back money or breaking any of the pimp's rules, even one as minor as not standing on the right corner, can lead to punishment. Cold showers are a common form of punishment because no marks are left, which would reduce the prostitute's earning potential. Other punishments include withholding food, rape, and even murder, although a pimp would be unlikely to kill a prostitute with high earnings.

Some prostitutes try to work on their own, without a pimp. The police refer to them as "renegades." The community of pimps and prostitutes is a small one, and word travels through it very quickly. Pimps usually have a good idea who is working and which pimps control them. When a prostitute becomes a renegade, word spreads quickly via social media and text messages. She becomes susceptible to actions of other pimps who feel free to hurt her, kidnap her, and force her to belong to him as her new pimp.

Detective Rios explained that "Backpage" is a website similar to Craigslist, but used to facilitate prostitution by attracting customers, known as "johns" or "tricks." Ads are usually purchased with a credit card gift card, known as a

“vanilla card” as the purchaser’s name is not on the card. The person placing the ad must nevertheless give a phone number or email address.

The Los Angeles area of Western Avenue between Gage Avenue and Florence Avenue is known for a high concentration of transgender prostitutes. Any “john” who frequented the area would know that a prostitute he solicited would likely be transgender.

***The murder of Deshawn B.***

On December 3, 2014, 21-year-old Deshawn B. was shot to death at approximately 4:00 a.m. on the porch of a house on South Wilton Place, not far from the Western Avenue prostitution activity. She was shot several times with a small caliber weapon. The trajectory of the bullets was consistent with the shooter’s having stood at a lower elevation at first, and then delivering the final shot while pointing the weapon down at the side of her head. She died within minutes.

Ronisha B. testified that Deshawn had been her close friend since the sixth grade, and was like a sister to her. Both Ronisha and Deshawn were transgender women and prostitutes. They earned their money along Western Avenue between Gage Avenue and Florence Avenue. When Ronisha became a prostitute at the age of 16, about five years before the trial, Deshawn taught her that before getting into a car with a man, she should always tell him that she was transgender and ask what he was looking for, in order to avoid any “drama” later.

Ronisha testified that she would see Deshawn with a man she called her boyfriend, who was not a customer. He would stay off to the side while she worked, but Ronisha denied that Deshawn ever said he was her pimp. Ronisha was reluctant to

identify the man. She described the man she saw as taller than Deshawn, and she denied telling law enforcement that the photograph of defendant that he showed to her, depicted the man.

Detective Thomas Callian testified that he interviewed Ronisha twice, once separately and again with the prosecutor two days before his trial testimony. In both interviews, Ronisha told him that she had seen the boyfriend with Deshawn a couple days before the murder, as well as two or three times earlier. Ronisha described the boyfriend's hairstyle as cornrows or dreadlocks, and said she had seen a photograph of him on the news. When Detective Callian showed her defendant's DMV photograph, Ronisha said that it was the same person she had seen as the boyfriend. She also identified another photograph of defendant as the man she saw.

Since she was unavailable at the time of trial, Deshawn's sister Brandy Foster's preliminary hearing testimony was read to the jury. Deshawn was born Foster's brother, but lived life as a woman. Deshawn wore her hair long and looked like a woman. Although Deshawn never told Foster exactly what she did in that area, Foster knew about the prostitution activity there. Foster did not know defendant, and Deshawn never mentioned the name Robert Spells to her, although she did speak of a "James."

Deshawn called Foster the night before her death, and asked to be picked up at the Jack-in-the-Box restaurant on Florence and Western Avenues. When Foster arrived, Deshawn was not there. After phone calls, they made contact. Deshawn jumped into the back passenger seat, closed the door, and told Foster to go. Deshawn carried a large black purse and two phones, and wore black boots, black shirt, black pants, and a

black shawl. The two then went to another Jack-in-the-Box, further away. When Deshawn paid for her food, she took out a large wad of money. After eating, the two sat in the parked car for two hours, while Foster drank a beer and Deshawn smoked some marijuana. While there Deshawn ignored the many phone calls she received until the last one, after which she told Foster she was ready to go back. Foster dropped her off about 2:00 a.m. somewhere -- not Florence and Western Avenues, and that was the last time Foster saw Deshawn. Around 4:00 a.m., Deshawn sent a message, "Help me." Foster tried to call back, but kept getting voice mail.

A few minutes before 4:00 a.m., Deshawn called 911 and reported that she was being chased by a Black man with no other description. Several residents near the murder scene heard gunshots around 4:00 a.m. One of them, Michele Carreathers, testified that when she looked out her window immediately after hearing the shots, she saw a dark colored Toyota Camry or similar model stopped in the middle of the street. The car then backed up rapidly, turned the corner and went out of view. She observed that the backup lights appeared to be closer together than on most cars she had seen.

Surveillance video recorded from a nearby business was shown to the jury and the witness. One camera view shows a car with front-end damage passing by. Another shows an individual running back to the same car, which then moves in reverse down the street. Carreathers testified that the back of the car in the video looked like the one she saw that morning. Investigators determined that the car was a Nissan Maxima registered to defendant's girlfriend, Latoya Parsee. Detective Callian found the car at the address on the registration, searched it, and found

an electric bill addressed to defendant at the same address. He also found a polo shirt in the trunk, which later analysis revealed defendant's DNA.

The only evidence found at the crime scene besides Deshawn's body, consisted of one cell phone on a step below the porch, cartridge casings from a semiautomatic weapon, an unfired bullet, a used condom, a condom package, and an article of clothing. A criminalist who examined the body found a used condom between two layers of underwear. The two condoms were analyzed for DNA. Defendant's DNA matched the sperm swabbed from the condom found on the body as well as a sperm swab from the victim's anal opening. The DNA swabbed from the condom found at the scene was a mixture of two individuals, but a match could not be confirmed.

### ***The trafficking of Ajanay***

In February 2015, 11-year-old Ajanay D., who had been diagnosed with autism and learning disabilities, ran away from her foster home, wearing her mother's sandals and a blond wig. The same day, she met defendant, and scared, having nowhere to go, she got into his green Buick. Defendant took her to get food, and then to his mother's house, wherein Ajanay met defendant's mother and younger sister, who were nice to her.

Although she found many of the questions put to her confusing, and she was unable to remember the events clearly or sequentially, Ajanay testified at trial. She identified a photograph of defendant as he looked then, with dreadlocks and an "outline" haircut. After she met defendant's mother and sister, defendant took her to a room or to the garage, had sexual intercourse with her, and then put her to work as a prostitute. After that defendant sometimes had sex with her when she was



half asleep. Although she did not want him to do it and did not like it, she said nothing. On one occasion he forced himself on her while holding her down by the arms or hands.

Defendant also took her to a motel where she met defendant's brother and his girlfriend, "Juicy" who worked for the brother as a prostitute. They spent several nights there. Juicy answered Ajanay's questions about how to "ho," and they "turned tricks" in the motel room, taking turns.

Defendant bought clothes and earrings for Ajanay, took her photograph, which he placed on an internet advertisement, told her what to say to men who called, and would drop her off alone and scared in a certain neighborhood (a "track" or a "blade") with a cell phone. Ajanay would text him when she procured a "date" or to let him know that business was slow. She would have sex with men in their cars, and sometimes she would work in a hotel room. Men paid her from \$120 to \$300 for sex, and she had to turn over all the money she earned to defendant. Ajanay called defendant either Robert or "Class" -- a nickname meaning pimp.

Ajanay worked nearly every night during the week that she worked for defendant, sometimes until 5:00 a.m. The clothes defendant gave her did not keep her warm, and she was cold and hungry when she worked outside. She did not like having sex, and when defendant forced himself on her, she felt sad and it hurt. There were times when she was exhausted and she told him she did not want to work for him. He pushed her into a cold shower, with her bra on and made her stay there for five minutes. Ajanay felt unable to run away because defendant was always near, she was scared, there was no way to change out of the dress defendant had her wear and into her other clothes, and she did not know what she would do if she got away from him.

Before dawn on February 16, 2015, while Officer Stephani Carson was patrolling an area known for high prostitution activity, she observed a women who appeared to be a prostitute and a minor. Officer Carson approached and questioned her. The girl, later identified as Ajanay, gave a false name and an adult birth date. Ajanay appeared to have a mental or learning disability, as she had difficulty understanding questions and verbalizing her answers to them. Officer Carson took her to the station, verified her identity, and that she was 11 years old.

Detective Rios spoke with Ajanay that day and recognized her from the missing-minor flyer she had seen the day before. Before speaking to Ajanay, Detective Rios fed her and gave her a teddy bear, a backpack, and a blanket. Ajanay had difficulty communicating, and Detective Rios repeatedly had to direct her back to her story. Ajanay had difficulty expressing lengths of time, and would sometimes say tomorrow when she meant yesterday.

Detective Rios downloaded the contents of the phone taken from Ajanay, and found an email address for “mrrobertspells” and an Instagram account associated with defendant. The subscriber of the phone was a Lanesha Allen. A number for “Class” was in the contacts, as well as one for Juicy. While Ajanay was at the police station her phone rang repeatedly from Juicy’s number. It was not answered.

Detective Rios determined that the room defendant rented for Ajanay was at a motel in the Western Avenue track, which rented rooms in one to three hour increments. Defendant’s name and driver’s license number were on the motel registration card dated February 16, 2015. Lanesha Alban or Allen, was listed as an additional guest. Surveillance video showing the area around

the motel, as well as audio from front desk was reviewed. The video for February 16 shows defendant emerge from a Buick and then walk into the manager's office. The person seated in the passenger seat of the Buick wore a yellow dress. The height of a third person in the video was consistent with Juicy's height. After three hours, about 6:12 a.m., the Buick is seen leaving the area with the passenger in the yellow dress carrying a cell phone.

### ***The two investigations converge***

After Detective Callian learned that defendant was a suspect in the trafficking of Ajanay, he interviewed Ronisha and spoke to Detective Rios. Ronisha told him that she had seen defendant with Deshawn a couple days before the murder, and identified a photograph of him.

Video of the February 7, 2015 traffic stop of defendant in a Buick, recorded by the patrol car's dash camera, was played for the jury. There were four occupants in the car, two male, two female, including one who appeared to be a minor wearing a blond wig. Defendant was the driver. It was the same Buick identified in photographs by Ajanay, who was later identified as the minor in the blonde wig. The right-front passenger was identified as Juicy's pimp and as defendant's brother.

Defendant did not testify.

### **DISCUSSION**

Defendant's sole assignment of error is that the trial court's denial of his motions to sever the murder charges (counts 1 and 2) from the sex offense charges (counts 3 through 9) resulted in a violation of due process. In a pretrial hearing, the court denied the first motion without prejudice. Defendant's renewed motion, made six months later on the first day of trial, was also denied.

“Because consolidation ordinarily promotes efficiency, the law prefers it.” (*People v. Ochoa* (1998) 19 Cal.4th 353, 409.) Consolidation obviates the need to select an additional jury, avoids the waste of public funds, conserves judicial resources, and benefits the public due to the reduced delay in the disposition of criminal charges. (*People v. Mason* (1991) 52 Cal.3d 909, 935.) Section 954 permits the joinder of “two or more different offenses connected together in their commission . . . or two or more different offenses of the same class of crimes or offenses,” under separate counts. (*People v. Valdez* (2004) 32 Cal.4th 73, 119.) Evidence of defendant’s motivation can provide that connection. (*Alcala v. Superior Court* (2008) 43 Cal.4th 1205, 1219.)

Whether joinder was proper is evaluated on the showing made to the court at the time of its ruling. (*People v. Marshall* (1997) 15 Cal.4th 1, 27.) Prior to trial defendant filed a written motion to sever the murder and robbery counts from the remaining counts, on the ground that robbery and murder were a different class of crime from rape, making severance mandatory. The motion also requested discretionary severance on the ground that the alleged sex crimes against a child were so inflammatory that they would taint the jury’s consideration of the murder and robbery counts. The pretrial motion was denied without prejudice, finding that murder and rape were both assaultive crimes, therefore constituting offenses of the same class of crimes which were properly joined pursuant to section 954.

“Murder and rape are assaultive crimes against the person and, as such, are “offenses of the same class of crimes” within the meaning of section 954 and were properly joinable. [Citations.] . . .’ [Citation.]” (*People v. Ramirez* (2006) 39 Cal.4th 398, 439.) Thus, the court did not err in ruling that the counts were

properly joined. As such, it is defendant's burden to show that the denial of his motions to sever was an abuse of discretion, and to do so, defendant must demonstrate that the court's ruling exceeded the bounds of reason; further, he must clearly establish that a substantial danger of prejudice required separate trials. (*Ibid.*)

Four criteria used to determine whether the defendant has met his burden "are these: (1) would the evidence of the crimes be cross-admissible in separate trials; (2) are some of the charges unusually likely to inflame the jury against the defendant; (3) has a weak case been joined with a strong case or another weak case so that the total evidence on the joined charges may alter the outcome of some or all of the charged offenses; and (4) is any one of the charges a death penalty offense, or does joinder of the charges convert the matter into a capital case. [Citation.]" (*People v. Marshall, supra*, 15 Cal.4th at pp. 27-28.)

Defendant does not contend that the prosecutor's offer of proof failed to show that evidence would be cross-admissible, rather he contends that neither court expressly so found. We infer a finding of cross-admissibility from the court's pretrial express consideration of the prosecutor's argument that evidence relevant to the trafficking case would prove defendant's status as a pimp, which in turn would serve to prove in the murder case that defendant knew the murder victim was a transgender prostitute, that his motive in having sex with her was to rob her, and that the murder was premeditated.

Clearly, the offer of proof was sufficient to show cross-admissibility. The prosecutor's written opposition included a summary of the evidence expected to be presented at trial. He argued that proving defendant was a pimp required the evidence

regarding defendant's trafficking of Ajanay, in order to show that defendant had a motive to control or rob Deshawn. Furthermore, such evidence would foreclose a claim of self-defense or heat of passion, which a john might claim upon discovery that he had purchased sex from a transgender woman. The prosecutor represented that Detective Rios would testify as an expert on human trafficking as follows: that Deshawn was murdered in an area that consisted largely of transgender prostitution; that johns and pimps are generally aware of which prostitutes worked in the neighborhood; that pimps view prostitutes as potential earnings, whether transgender or not; that sex between pimps and prostitutes is most often about power and control; that prostitutes are expected to comply with the demands of pimps; and that prostitutes seldom use force against pimps.

Where, as here, evidence underlying the joined charges has been shown to be cross-admissible in separate trials, "that factor alone is normally sufficient to dispel any suggestion of prejudice and to justify a trial court's refusal to sever properly joined charges." [Citations.]" (*People v. Merriman* (2014) 60 Cal.4th 1, 38.)<sup>2</sup> After its implied finding of cross-admissibility, the court stated: "But even assuming a lack of cross-admissibility, it is not necessarily dispositive." The court went on to consider

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<sup>2</sup> We also note that "[o]ffenses 'committed at different times and places against different victims are nevertheless 'connected together in their commission' when they are . . . linked by a 'common element of substantial importance.'" [Citations.]" [Citations.]" (*People v. Valdez, supra*, 32 Cal.4th at p. 119.) Here, the prosecution showed that defendant's status as a pimp was a common element of substantial importance as evidence of his motivation and knowledge of the area and the vulnerability of his victims.

defendant's request that it exercise its discretion to sever counts. The court then found that the evidence of the murder and the rape of a minor would be equally inflammatory, and the evidence supporting one would not be more inflammatory or shocking than the evidence supporting the other. The court also noted that it did not appear in the prosecutor's offer of proof that the evidence supporting counts 1 and 2 would be weaker than the evidence supporting the remaining counts. In light of these considerations the pretrial court concluded that defendant had not met his burden of demonstrating that severance was required. The court invited defendant to renew the motion if the prosecution's offer of proof changed.

Six months later, on the first day of trial, defendant renewed his motion before the trial judge. Defense counsel argued that the "Me-Too Movement" would cause the sex charges to be even more inflammatory than originally thought. Counsel also argued that sex crimes against a child were more inflammatory than murder. The trial court found no change in circumstances which would justify reconsidering the prior ruling, and denied the motion.

Whether defendant has demonstrated an abuse of discretion is determined "in light of the showings made and the facts known by the trial court at the time of the court's ruling. [Citations.]" (*People v. Merriman, supra*, 60 Cal.4th at p. 37.) Defendant does not contend that given the facts before the court at the time of the rulings, the discretionary determination exceeded the bounds of reason, and has thus failed to demonstrate an abuse of discretion. Instead, defendant asserts that the joinder resulted in a denial of his right to due process and a fair trial.

Defendant contends that both cases were weak, and that the single trial of one weak case with another weak case led to an “unduly prejudicial” result. Defendant sets forth weaknesses in both cases, and then argues that without the evidence of the sex offense, the jury might have acquitted him of the murder and robbery charges, and without evidence of murder and robbery, he might have been acquitted of the sex charges. He concludes by asserting that it is respondent’s burden to prove that the erroneous joint trial was harmless beyond a reasonable doubt, under the test of *Chapman v. California* (1967) 386 U.S. 18, 24. In fact the contrary is correct. If the denial of the motions was proper under section 954, and no abuse of discretion has been shown, reversal is unwarranted unless *defendant* makes a clear showing that the joinder resulted in a trial that “was so grossly unfair as to deny due process. [Citations.]” (*People v. Stitely* (2005) 35 Cal.4th 514, 531.)

The trial of the murder and robbery case was not grossly unfair. Despite hearing the evidence regarding Ajanay, the jury did not convict defendant of those charges. Although the jury was deadlocked eleven to one in favor of guilt, defendant avoided conviction, and “the benefits of joinder are not outweighed . . . merely because properly joined charges might make it more difficult for a defendant to avoid conviction compared with his or her chances were the charges to be separately tried. [Citations.]” (*People v. Soper* (2009) 45 Cal.4th 759, 781, citing *Zafiro v. United States* (1993) 506 U.S. 534, 540.)

Nor has defendant otherwise shown a grossly unfair trial. He posits the following: “The evidence at trial showed . . . that the evidence of the murder and robbery of Deshawn was so weak that it had a spillover effect to conviction [*sic*] on the sex offenses.



Further, Ajany [sic] had serious credibility problems, particularly with regard to whether she had been raped and/or kidnapped by [defendant].” Although Ajanay clearly had communication difficulties, her account of the 10 days she spent with defendant was amply corroborated. Ajanay testified that defendant had sex with her more than once and once forcibly raped her; and that when she was exhausted and did not want to work, defendant pushed her into a cold shower and made her stay there for five minutes. Detective Rios explained that cold showers and rape were a common form of punishment inflicted by pimps on their prostitutes. Ajanay testified that she would have sex with men in their cars or in a hotel room and she had to turn over all the money she earned to defendant. Officer Carson observed Ajanay among several apparent prostitutes waving at cars and speaking to men. On the phone taken from Ajanay, Detective Rios found an email address in defendant’s name and an Instagram account linked to defendant. Defendant’s brother was in the list of contacts, as well as Juicy, whose number called the phone repeatedly at the police station. Ajanay testified that Juicy and defendant’s brother were at the hotel with them, and that Juicy used the same room as Ajanay for prostitution. Detective Rios found the motel, a room registered to defendant, and a video showing defendant arriving and leaving with Ajanay and someone who appeared to be Juicy. Defendant was driving the same Buick stopped by Officer Estrada when Ajanay and defendant’s brother were passengers.

Nor was the evidence of the murder and robbery of Deshawn weak. Defendant states: “The only evidence presented by the prosecution showed that [defendant] had sex with Deshawn at some point and the car [defendant] had access to was

seen in a video at a time contemporaneous with the murder.” Defendant acknowledges that a man could be seen in the video running away, but he minimizes this evidence by arguing that the man could easily have been running from the gunshots.<sup>3</sup> He concludes that there was “absolutely no evidence” that defendant was Deshawn’s pimp or that he robbed her.

On the contrary, overwhelming evidence established that defendant was a pimp, and defendant does not contend that such evidence would have been inadmissible in a separate trial. Instead he puts forth the meritless argument that the evidence did not show that defendant was *Deshawn’s* pimp. Ronisha testified that she would see Deshawn with a man she called her boyfriend. The man was not a customer, and he would stay off to the side while she worked. In interviews with Detective Callian and the prosecutor, Ronisha identified a photograph of defendant as depicting the boyfriend. Detective Rios testified that prostitutes commonly think of their pimps as boyfriends, at least initially. Given Detective Rios’s description of pimp/prostitute relationships, if Deshawn had been withholding money from her pimp, it was likely that he punished her with death and possibly rape. Defendant’s DNA was matched to the condom found on Deshawn, and on a rectal sperm sample. In addition, even if defendant was not Deshawn’s pimp, the money Deshawn spent

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<sup>3</sup> As defendant has not had the trial exhibits transmitted to this court, we have not viewed the videos in evidence. “It is axiomatic that it is the burden of the appellant to provide an adequate record to permit review of a claimed error, and failure to do so may be deemed a waiver of the issue on appeal. [Citations.]” (*People v. Akins* (2005) 128 Cal.App.4th 1376, 1385.)

from her large wad of cash also indicates that she may have become a renegade, for which she would not only be subject to punishment by her own pimp, but would be susceptible to being hurt or kidnapped by other pimps. Compelling evidence established that whoever killed Deshawn also robbed her. The purse containing a large amount of money that Deshawn had when Foster dropped her off at 2:00 a.m. was not recovered, and just one of Deshawn's phones was recovered. We assume the business video shows no other man in the area at that early hour and that the only car that sped away after the gunfire was the Nissan Maxima. That car was not simply *accessible* to defendant, it was registered to his girlfriend at an address where defendant received utility bills.

As the two cases were not weak, we reject defendant's contention that joinder of two weak cases created a prejudicial spillover effect. Defendant has failed to demonstrate that either of the courts' rulings were incorrect or an abuse of discretion, and he has not met his burden to show that the trial was grossly unfair. Reversal of his convictions is thus unwarranted.

#### **DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

\_\_\_\_\_, J.  
HOFFSTADT